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California Franchise Tax Board*

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:

PG&E CORPORATION

and

**PACIFIC GAS AND ELECTRIC
COMPANY,**

Debtors.

- ☐ Affects PG&E Corporation
☐ Affects Pacific Gas and Electric Company
☒ Affects both Debtors

* All papers shall be filed in the Lead Case
No. 19-30088 DM

Case No. 19-30088 DM

Chapter 11

(Lead Case)
(Jointly Administered)

**CALIFORNIA FRANCHISE TAX
BOARD'S OBJECTIONS TO MOTION
FOR ORDER APPROVING
(A) PROCEDURES FOR FILING
OMNIBUS OBJECTIONS TO CLAIMS
AND (B) THE FORM AND MANNER OF
THE NOTICE OF OMNIBUS
OBJECTIONS [DOCKET NO. 7758]**

Hearing: June 24, 2020
Time: 10:00 a.m.
Courtroom: 17
Judge: The Honorable Dennis J.
Montali

Creditor California Franchise Tax Board ("FTB") objects to the Motion for Order Approving (A) Procedures for Filing Omnibus Objections to Claims and (B) the Form and Manner of the Notice of Omnibus Objections ("Procedures Motion") [Docket No. 7758] on the grounds that the proposed objection procedures would relieve Debtors of providing supporting

evidence to their objections, potentially shift the burden of proof to FTB, and unreasonably change the service requirement.¹

ARGUMENT

I. THE PROPOSED OMNIBUS CLAIM OBJECTION PROCEDURES VIOLATE NINTH CIRCUIT AUTHORITY AND BANKRUPTCY LOCAL RULE 9013-(D) BECAUSE THEY DO NOT REQUIRE DEBTORS TO SUPPORT THE OBJECTIONS WITH EVIDENCE

The proposed Omnibus Claim Objection Procedures enable Debtors to file an Omnibus Objection without having to provide supporting evidence, in violation of Ninth Circuit authority and Bankruptcy Local Rules.

First, in *Lundell v. Anchor Construction Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (underlined emphasis added), the Ninth Circuit requires an objector to support its objection to claim with sufficient evidence:

[a] proof of claim is deemed allowed unless a party in interest objects under 11 U.S.C. § 502(a) and constitutes “prima facie evidence of the validity and amount of the claim” pursuant to Bankruptcy Rule 3001(f). . . .

Upon objection, the proof of claim provides “some evidence as to its validity and amount” and is “strong enough to carry over a mere formal objection without more.” . . .

To defeat the claim, the objector must come forward with sufficient evidence and “show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves.”

By alleviating Debtors of the requirement to present evidence, the Procedures Motion proposes a procedure that is inconsistent with *Lundell*.

Second, Bankruptcy Local Rule 9013-1(d) requires that factual contentions in support of an objection be substantiated by affidavits, declarations, or other evidence. Nonetheless, the Procedures Motion states, “the Omnibus Objections *may* be accompanied by an affidavit or declaration” Procedures Motion, ¶ 4. The Procedures Motion does not *require* an affidavit, declaration, or any other evidence in support of the Omnibus Objection. Thus, the Procedures Motion proposes a procedure that does not follow Bankruptcy Local Rule 9013-1(d).

Accordingly, Debtors must support the Omnibus Objections with supporting evidence.

¹ Capitalized terms not otherwise defined herein shall have the meanings as they are defined in the Procedures Motion.

1 **II. IF DEBTORS PRESENT SUFFICIENT EVIDENCE TO OVERCOME THE PRESUMPTIVE**
2 **VALIDITY OF FTB’S CLAIMS, THE PROPOSED OMNIBUS CLAIM OBJECTION**
3 **PROCEDURES NONETHELESS IMPROPERLY SHIFT THE BURDEN OF PROOF TO FTB**

4 If an objector presents sufficient evidence to overcome the presumptive validity of a proof
5 of claim, then state law determines who bears the burden of proof. *Raleigh v. Illinois Department*
6 *of Revenue*, 530 U.S. 15, 26 (2000) (“the burden of proof on a tax claim in bankruptcy remains
7 where the substantive tax law puts it”). In the case of FTB’s tax claims, that burden of proof rests
8 with debtor. *See Consolidated Accessories Corp. v. Franchise Tax Board*, 161 Cal.App.3d 1036,
9 1039 (Cal. Ct. App. 1984). As stated by the United States Supreme Court, “placing the burden of
10 proof on the taxpayer reflects . . . the vital interest of the government in acquiring its lifeblood,
11 revenue, . . . the taxpayer’s readier access to the relevant information, . . . and the importance of
12 encouraging voluntary compliance by giving taxpayers incentives to self-report and to keep
adequate records in case of dispute” *Raleigh*, 530 U.S. at 21.

13 However, the proposed Omnibus Claim Objection Procedures improperly shift the burden
14 of proof to FTB, by requiring that any Response to include (i) a copy of **any other** documentation
15 or evidence to the extent not included in the proof of claim on which the claimant will rely in
16 opposing the objection and (ii) a declaration under penalty of perjury of a person with personal
17 knowledge of the relevant facts in support of the Response. Procedures Motion at ¶ 9(a).

18 To begin, this requirement precludes (or negates) the parties’ ability to conduct discovery
19 with respect to an Omnibus Objection or introduce other facts or documents in support of the
20 Response.

21 Next, because Debtors need not provide evidence in support of the Omnibus Objection, the
22 Omnibus Claim Objection Procedures would force FTB to prove up its tax claims that were
23 deemed presumptively valid. *Lundell*, 223 F.3d at 1039; *Los Angeles International Airport Hotel*
24 *Associates v. State Board of Equalization (In re Los Angeles International Airport Hotels*
25 *Associates)*, 106 F.3d 1479, 1480 (9th Cir. 1997) (“Because the [tax] claim is not based upon a
26 writing, its proof of claim is entitled to the presumptive validity attributed to it by Rule 3001(f)”;
27 Fed. R. Bankr. P. 3001(f).
28

1 Additionally, while Bankruptcy Local Rule 9013-1(d) requires a party to support factual
2 contentions made in support of an opposition with declarations or affidavits, the Bankruptcy
3 Local Rules do not require that **all evidence** in response to a claim objection be filed with the
4 response. Instead, the Bankruptcy Local Rules only provide that, if there is a factual dispute
5 regarding a claim objection, the initial hearing on that claim objection is deemed a status
6 conference at which the bankruptcy court will not receive evidence. B.L.R. 3007-1(b).

7 Finally, FTB's claims are contingent claims, with an audit ongoing as to the tax years at
8 issue. Until the audit concludes and the liability becomes final, the amounts of Debtors' tax
9 obligations to FTB for these tax years are not yet due and payable. Nor will FTB have the
10 requisite documentation to submit with its Response, as the Omnibus Claim Objection Procedures
11 mandate.

12 **III. THE PROCEDURES MOTION BOLDLY PROPOSES THAT DEBTORS MUST *RECEIVE***
13 **RESPONSE TO AN OMNIBUS OBJECTION BY THE DEADLINE TO BE "TIMELY"**

14 The Omnibus Claim Objection Procedures states that a Response to an Omnibus Objection
15 "will be deemed timely served *only if* a copy of the Response is *actually received* by counsel for
16 the Debtors on or before the deadline to respond" to the Omnibus Objection. Procedures Motion
17 at ¶ 9(d) (emphasis added). This proposal is unreasonable because a Claimant responding to an
18 Omnibus Objection does not have control of whether counsel for the Debtors actually receives the
19 Claimant's Response. Instead, a Claimant should only have to serve the Response by email or
20 mail on counsel for the Debtors *on or before the deadline to respond*.

21 **CONCLUSION**

22 Therefore, FTB respectfully requests that the Court sustain the objections to the Procedures
23 Motion.

24 ///

25 ///

1 Dated: June 16, 2020

Respectfully submitted,

2 XAVIER BECERRA
3 Attorney General of California
4 KAREN W. YIU
Supervising Deputy Attorney General

5 /s/ Cara M. Porter
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8 *Attorneys for Creditor*
9 *California Franchise Tax Board*

CERTIFICATE OF SERVICE

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On June 16, 2020, I served the attached **CALIFORNIA FRANCHISE TAX BOARD'S OBJECTIONS TO MOTION FOR ORDER APPROVING (A) PROCEDURES FOR FILING OMNIBUS OBJECTIONS TO CLAIMS AND (B) THE FORM AND MANNER OF THE NOTICE OF OMNIBUS OBJECTIONS [DOCKET NO. 7758]** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct that this declaration was executed on June 16, 2020, at San Francisco, California.

Taryn Lovett

Declarant

/s/ Taryn Lovett

Signature

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